

## DETAILED ACTION

This office action is in response to the Remarks filed 14 March 2011.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 13-18, 27, and 30 are rejected under 35 U.S.C. 102(b) as being anticipated by Jacobs (WO 98/46409). Regarding Claims 13-15, Jacobs shows that it is known to carry out a method for the manufacture of a thin-walled article (Abstract) including injection molding a blend of (a) at least one polymer, and (b) at least one high melt flow compatible polymer having an MI of greater than 100 (Page 6, lines 1-14; Page 8, lines 15-16; Page 10, lines 13-18).

Regarding Claim 16, Jacobs shows the process as claimed as discussed in the rejection of Claim 13 above, including a method wherein at least one of (a) and (b) include a polymer formed using a metallocene (Page 8, lines 15-16).

Regarding Claim 17, Jacobs shows the process as claimed as discussed in the rejection of Claim 16 above, including a method wherein both components (a) and (b) include propylene and/or ethylene polymer or copolymer (Page 6, lines 11-14).

Regarding Claim 18, Jacobs shows the process as claimed as discussed in the rejection of Claim 13 above, including a method wherein component (a) is present in an amount from about 40-99.9 weight percent based on the total weight and forms a continuous or co-continuous phase of the blend (Examples 1-4).

Regarding Claim 27, Jacobs shows the process as claimed as discussed in the rejection of Claim 13 above, including a method wherein at least one polymer (a) is a plastomer, substantially linear polymer in which polypropylene constitutes over 50% of

the polymer and which has an MI of greater than 100 (Page 6, lines 11-19; Page 10, lines 13-18).

Regarding Claim 30, Jacobs shows the process as claimed as discussed in the rejection of Claim 13 above, including a method wherein the flexible thin-walled article is a tube (Figure 1).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs, in view of Schumann et al. (U.S. Patent 5,513,563). Jacobs shows the process as claimed as discussed in the rejection of Claim 13 above, but he does not show including nanoparticles in his composition. Schumann et al., hereafter "Schumann," shows that it is known to create a PP/PE composition including nanoparticles dispersed therein (Column 6, lines 18-35; it is interpreted that a 6um (=6000nm) particle meets the nanoparticle feature). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use Schumann's nanoparticles in Jacobs' composition in order to render the film transparent to light (see Schumann, Column 6, lines 12-17), protecting whatever may be contained within the film from light alteration.

Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs, in view of Agarwal et al. (U.S. Patent 6,407,171). Jacobs shows the process as claimed as discussed in the rejection of Claim 13 above, but he does not specify the extractable content of the composition. Agarwal shows that it is known to carry out a method of molding a PP/PE composition wherein the extractable content is less than or equal to 2% (Column 8, lines 16-24). It would have been prima facie obvious to one of ordinary

skill in the art at the time the invention was made to form Jacobs' composition according to the teachings of Agarwal's extractable content compositions in order to enhance reblock and clarity (see Agarwal, Column 1, lines 61-64).

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs, in view of Rieger (U.S. Patent 6,555,643). Jacobs shows the process as claimed as discussed in the rejection of Claim 13 above, but he does not show the pentad concentration of the polypropylene. Rieger shows that it is known to carry out a method of using polypropylene wherein the pentad concentration is between 25-60% (Abstract). It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to use Rieger's pentad concentration in the composition of Jacobs in order for the polymer to be useful in many applications (see Rieger, Column 1, lines 43-46).

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jacobs, in view of Castagna (U.S. Patent 4,061,694). Jacobs shows the process as claimed as discussed in the rejection of Claim 13 above, but he does not show the percentage of ethylene derived units. Castagna shows that it is known to carry out a method of using polypropylene wherein the propylene polymer has 5-25% of ethylene derived units (Column 2, lines 64-67; it is interpreted that Castagna's "about 30%" meets the claimed 25%). It would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made to use Castagna's ethylene derived unit percentage in the composition of Jacobs in order for the polymer to have excellent low temperature impact strength (see Castagna, Column 2, lines 30-32).

#### ***Double Patenting***

\*\*The examiner notes that at the time of this writing, the Paralegal Department had not rendered a decision on the Terminal Disclaimer filed 14 March 2011. For this reason, the Double Patenting section has been left in this office action.\*\*

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 13-17 and 30 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 12-16 and 18 of U.S. Patent No. 6,547,094, as noted in the chart below. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant claims are merely broader versions of the patented claims, and therefore not patentably distinct therefrom, as they are effectively anticipated by the patented claims.

<b>Instant Claims</b>	<b>Claims of 6,547,094</b>
13-15	12-14
16	15
17	15, 16
30	18

***Response to Arguments***

Applicant's arguments filed 14 March 2011 have been fully considered but they are not persuasive.

Applicant contends that Jacobs does not show injection molding a blend having at least one high melt flow compatible polymer having an MI greater than 100. This is not persuasive because Jacobs shows using at least one high melt flow compatible polymer having an MI greater than 100 at Page 10, lines 13-18.

Applicant contends that Jacobs does not show the criticality of using an MI greater than 100, and applicant further contends that unexpected results are achieved when using at least one high melt flow compatible polymer having an MI greater than 100. Applicant points to the specification beginning on Page 25 as evidence. However, Page 25 and subsequent pages is only a discussion of alleged benefits. There has been no evidence submitted showing the criticality and unexpected results of using at least one high melt flow compatible polymer having an MI greater than 100 relative to blends including melt flow compatible polymers having different MI's, e.g. less than 100, 100. The examiner maintains that Jacobs shows the claimed invention.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MONICA HUSON whose telephone number is (571)272-1198. The examiner can normally be reached on Monday-Friday 9:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on 571-272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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